THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :2464 of 2007

DATED:06-03-2007

Manoj Kumar Kothari & 4 others.

.....
PETITIONERS

AND

The Government of A.P.,
Rep., by its Secretary,
Municipal Administration
& Urban Development Department,
Secretariat,
Hyderabad & 2 others.

.....RESPONDENTS

ORDER:

Heard the learned counsel for the petitioners as well as the learned Government Pleader for Municipal Administration & Urban Development Department appearing for the 1st respondent, and the learned counsel appearing for the respondents 2 and 3.

2. Petitioners seek a writ of mandamus declaring the proceeding in Lr.No.382/BRS/HO/98-06/139, dated 24-01-2007, issued by the 2nd respondent, as illegal, arbitrary, and consequently direct the respondents not to take any coercive steps in respect of the property bearing Municipal No.16-2-701/6/15 to 18, Malakpet, Hyderabad.

3. It is the case of the petitioners that each of the petitioners purchased 178.32 sq.mts of the premises bearing No.16-2-701/6/15 to 18 situated at Malakpet, Hyderabade vide registered sale deeds in Document Nos.3177/95, 3176/95, 1859/98 and 660-96. Thereafter, they have obtained the sanction vide permit No.128/12789 dated 05-01-1998 but it is stated that there are certain deviations in the construction, and the Government issued orders in G.O.Ms.No.419 dated 30-07-1998 expressing its intention to regularize the unauthorized constructions constructed before the cut off date but the said G.O. was questioned on the file of this Court in W.OP.No.24181 of 1998 and this Court struck down the said G.O. Thereafter, the Government came up with a legislation called “Andhra

Pradesh Regularization of unauthorized construction in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003 (Act No.6 of 2003)" (for brevity, 'the Act') which came into effect from 15-04-2003.

4. This Court in W.P.No.20511 of 1998 quashed the said G.O.Ms.No.419 MA, dated 30-07-1998, on the ground that the same has been issued without any authority of law and there is no rule or any provision in the relevant Acts which give power to Government to regularize the unauthorized constructions and it is *ultra vires* to the provisions of the Hyderabad Municipal Corporations Act, 1955 and the rules made thereunder. Therefore, the Government came up with the said legislation authorizing the competent authorities to regularize the unauthorized constructions and the constructions made in deviation to the sanctioned plan, upto 30-06-1998, voluntary declaration or application for regularisation filed as stipulated under various Government Orders and to regularize the same after levying the penal amount in accordance with the procedure prescribed or the orders issued in this regard.

5. It is stated that the petitioners are entitled for regularization of the deviation in accordance with the provisions of the said Act but the respondents 2 and 3 rejected their applications on the ground that a case is pending before the Court.

6. Sri Ganta Ramarao, learned counsel appearing for the respondents 2 and 3, submits that no doubt the said Act was questioned on the file of this Court but no case is pending insofar as regularization of the unauthorized constructions in respect of the properties of the petitioners in question and therefore, rejection of the

applications of the petitioners on the ground that the Court case is pending is only by mistake.

7. Having regard to the facts and circumstances of the case, and in view of the aforesaid submission of the learned counsel for the respondents, the Writ Petition is disposed of directing the respondents 2 and 3 to consider and dispose all the applications of the petitioners pending for regularization of the unauthorized construction of the residential building in accordance with the provisions of the Act 6 of 2003. Till then, no coercive steps may be taken against the petitioners. No order as to costs.

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V.ESWARAIAH,J

06th March, 2007.
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